

By: Farrar

H.B. No. 2095

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of and claims against residential home
builders.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. CHANGES TO TEXAS RESIDENTIAL

CONSTRUCTION COMMISSION ACT

SECTION 1.01. Section 401.003(a), Property Code, is amended
to read as follows:

(a) In this title, "builder" means any person who, for a
fixed price, commission, fee, wage, or other compensation, sells,
constructs, or supervises or manages the construction of, or
contracts for the construction of or the supervision or management
of the construction of:

(1) a new home;

(2) a material improvement to a home, other than an
improvement solely to replace or repair a roof of an existing home;
or

(3) an improvement to the interior of an existing home
~~[when the cost of the work exceeds \$10,000].~~

SECTION 1.02. Chapter 401, Property Code, is amended by
adding Section 401.008 to read as follows:

Sec. 401.008. HOMEOWNER FEES NOT REQUIRED. A homeowner may
not be charged a fee in connection with:

(1) filing a complaint with the commission;

1 (2) a state-sponsored inspection or dispute
2 resolution process;

3 (3) an arbitration required by this title; or

4 (4) a complaint, request, or other proceeding under
5 Chapter 409 or Subtitle D or E.

6 SECTION 1.03. Section 406.001(a), Property Code, is amended
7 to read as follows:

8 (a) The Texas Residential Construction Commission consists
9 of nine members appointed by the governor with the advice and
10 consent of the senate as follows:

11 (1) four members must be builders who each hold a
12 certificate of registration under Chapter 416;

13 (2) three members must be representatives of the
14 general public who have consistently shown an interest in consumer
15 protection;

16 (3) one member must be a licensed professional
17 engineer who practices in the area of residential construction; and

18 (4) one member must be either a licensed architect who
19 practices in the area of residential construction or a building
20 inspector who meets the requirements set forth in Chapter 427 and
21 practices in the area of residential construction.

22 SECTION 1.04. Section 416.004, Property Code, is amended by
23 amending Subsections (a) and (b), and adding Subsection (a-1) to
24 read as follows:

25 (a) The commission shall charge and collect:

26 (1) a filing fee for an application for an original
27 certificate of registration of at least [~~that does not exceed~~]

1 \$500;

2 (2) a fee for renewal of a certificate of registration
3 of at least ~~[that does not exceed]~~ \$300; and

4 (3) a late fee that does not exceed the amount of the
5 fee due if payment of a registration application or renewal fee due
6 under this title is late.

7 (a-1) A fee charged under Subsection (a) applies to each
8 builder, including a corporation, limited liability company,
9 partnership, limited partnership, limited liability partnership,
10 sole proprietor, and any subsidiary of those persons.

11 (b) The commission shall establish a fee schedule that takes
12 into consideration the unit volume or dollar volume of potential
13 applicants. The commission may raise registration and renewal fees
14 as necessary to provide public service in connection with
15 investigations of construction defect complaints filed by
16 homeowners under this title.

17 SECTION 1.05. Section 416.005, Property Code, is amended to
18 read as follows:

19 Sec. 416.005. GENERAL ELIGIBILITY REQUIREMENTS. A person
20 may not receive a certificate of registration under this chapter
21 unless:

22 (1) the person, at the time of the application:

23 (A) is at least 18 years of age; ~~and~~

24 (B) is a citizen of the United States or a
25 lawfully admitted alien; and

26 (C) provides proof of financial responsibility
27 as required by Section 416.013; and

1 (2) the commission is satisfied with the person's
2 honesty, trustworthiness, and integrity based on information
3 supplied or discovered in connection with the person's application.

4 SECTION 1.06. Section 416.010(c), Property Code, is amended
5 to read as follows:

6 (c) If a builder operates under any name other than the name
7 that is set forth on the builder's certificate of registration, the
8 builder shall, within 20 [~~45~~] days of operating under this other
9 name, disclose this other name to the commission.

10 SECTION 1.07. Sections 416.011(a) and (b), Property Code,
11 are amended to read as follows:

12 (a) The commission shall establish rules and procedures for
13 a program through which a builder can be designated as a "Texas Star
14 Builder." A builder's participation in the program is mandatory
15 [~~voluntary~~] and is [~~not~~] a requirement for holding and renewing
16 [~~the issuance of~~] a certificate of registration required under this
17 chapter.

18 (b) A builder shall [~~who participates in this program will~~
19 ~~be allowed to~~] represent to the public that the builder is a "Texas
20 Star Builder" and meets all of the requirements and qualifications
21 that are set forth by the commission for the program.

22 SECTION 1.08. Chapter 416, Property Code, is amended by
23 adding Sections 416.013 and 416.014 to read as follows:

24 Sec. 416.013. INSURANCE REQUIREMENTS. (a) To be eligible
25 for an original or renewal certificate of registration under this
26 chapter, a builder must provide proof of financial responsibility
27 to the commission by maintaining a general liability insurance

1 policy with a limit of at least \$500,000.

2 (b) The commission may increase the insurance requirements
3 based on the builder's unit or dollar volume.

4 Sec. 416.014. BOND REQUIREMENT. A builder shall maintain a
5 surety bond for each construction project described by Section
6 401.003. The bond must:

7 (1) guarantee the builder's performance under the
8 builder's contract with the owner; and

9 (2) be issued in an amount not less than the fair
10 market value of the completed project if the project had no defects.

11 SECTION 1.09. Section 418.001, Property Code, is amended to
12 read as follows:

13 Sec. 418.001. GROUNDS FOR DISCIPLINARY ACTION. A person,
14 including a builder or a person who is designated as a builder's
15 agent under Section 416.006, or a person who owns or controls a
16 majority ownership interest in the builder is subject to
17 disciplinary action under this chapter for:

18 (1) fraud or deceit in obtaining a registration or
19 certification under this subtitle;

20 (2) misappropriation or misapplication of trust funds
21 in the practice of residential construction, including a violation
22 of Chapter 32, Penal Code, or Chapter 162, if found by a final
23 nonappealable court judgment;

24 (3) naming false consideration in a contract to sell a
25 new home or in a construction contract;

26 (4) discriminating on the basis of race, color,
27 religion, sex, national origin, or ancestry;

1 (5) publishing a false or misleading advertisement;

2 (6) failure to honor, within a reasonable time, a
3 check issued to the commission, or any other instrument of payment,
4 including a credit or debit card or electronic funds transfer,
5 after the commission has sent by certified mail a request for
6 payment to the person's last known business address, according to
7 commission records;

8 (7) failure to pay an administrative penalty assessed
9 by the commission under Chapter 419 or a fee due under Chapter 426;

10 (8) failure to pay a final nonappealable court
11 judgment arising from a construction defect or other transaction
12 between the person and a homeowner;

13 (9) failure to register a home as required by Section
14 426.003;

15 (10) failure to remit the fee for registration of a
16 home under Section 426.003;

17 (11) failure to reimburse a homeowner the amount
18 ordered by the commission as provided by Section 428.004(d);

19 (12) engaging in statutory or common-law fraud or
20 misappropriation of funds, as determined by the commission after a
21 hearing under Section 418.003;

22 (13) a repeated failure to participate in the
23 state-sponsored inspection and dispute resolution process if
24 required by this title;

25 (14) failure to register as a builder as required
26 under Chapter 416;

27 (15) using or attempting to use a certificate of

1 registration that has expired or that has been revoked;

2 (16) falsely representing that the person holds a
3 certificate of registration issued under Chapter 416;

4 (17) acting as a builder using a name other than the
5 name or names disclosed to the commission;

6 (18) aiding, abetting, or conspiring with a person who
7 does not hold a certificate of registration to evade the provisions
8 of this title or rules adopted under this title, if found by a final
9 nonappealable court judgment;

10 (19) allowing the person's certificate of registration
11 to be used by another person;

12 (20) acting as an agent, partner, or associate of a
13 person who does not hold a certificate of registration with the
14 intent to evade the provisions of this title or rules adopted under
15 this title;

16 (21) a failure to reasonably perform on an accepted
17 offer to repair or a repeated failure to make an offer to repair
18 based on:

19 (A) the recommendation of a third-party
20 inspector under Section 428.004; or

21 (B) the final holding of an appeal under Chapter
22 429;

23 (22) a repeated failure to respond to a commission
24 request for information;

25 (23) a failure to obtain a building permit required by
26 a political subdivision before constructing a new home or an
27 improvement to an existing home;

1 (24) abandoning, without justification, any home
2 improvement contract or new home construction project engaged in or
3 undertaken by the person, if found to have done so by a final,
4 nonappealable court judgment;

5 (25) a repeated failure to comply with the
6 requirements of Subtitle F; ~~or~~

7 (26) failure by the builder to complete a home under
8 the contract terms with a homeowner;

9 (27) failure by the builder to correct a failure to
10 comply with building codes or standards;

11 (28) failure by the builder to comply with
12 architectural drawings specified in a contract to build or purchase
13 a home;

14 (29) failure by the builder to comply with an
15 engineering design of a home, including the home's foundation;

16 (30) failure by the builder to satisfy a court
17 judgment or a judgment in a binding arbitration; or

18 (31) otherwise violating this title or a commission
19 rule adopted under this title.

20 SECTION 1.10. Section 426.001(b), Property Code, is amended
21 to read as follows:

22 (b) This subtitle does not apply to a dispute arising out
23 of:

24 (1) an alleged violation of Section 27.01, Business &
25 Commerce Code; or

26 (2) ~~[a builder's wrongful abandonment of an~~
27 ~~improvement project before completion; or~~

1 ~~[(3)]~~ a violation of Chapter 162.

2 SECTION 1.11. Sections 428.001(a), (b), and (d), Property
3 Code, are amended to read as follows:

4 (a) If a dispute between a homeowner and a builder arises
5 out of an alleged construction defect, the homeowner ~~[or the~~
6 ~~builder]~~ may submit to the commission a written request for
7 state-sponsored inspection and dispute resolution.

8 (b) The request must:

9 (1) specify in reasonable detail each alleged
10 construction defect that is a subject of the request;

11 (2) state the amount of any known out-of-pocket
12 expenses and engineering or consulting fees incurred by the
13 homeowner in connection with each alleged construction defect; and

14 (3) ~~[include any evidence that depicts the nature and~~
15 ~~cause of each alleged construction defect and the nature and extent~~
16 ~~of repairs necessary to remedy the construction defect, including,~~
17 ~~if available, expert reports, photographs, and videotapes, if that~~
18 ~~evidence would be discoverable under Rule 192, Texas Rules of Civil~~
19 ~~Procedure,~~

20 ~~[(4)] be accompanied by the fees required under Section~~
21 ~~426.004, and~~

22 ~~[(5)]~~ state the name of any person who has, on behalf
23 of the homeowner ~~[requester]~~, inspected the home in connection with
24 an alleged construction defect.

25 (d) At the time a person submits a request under this
26 section, the person must send by certified mail, return receipt
27 requested, a copy of the request~~[, including evidence submitted~~

1 ~~with the request,~~] to each other party involved in the dispute.

2 SECTION 1.12. Section 428.002(a), Property Code, is amended
3 to read as follows:

4 (a) In addition to the right of inspection provided by
5 Section 428.001(c), ~~[at any time]~~ before the conclusion of the
6 state-sponsored inspection and dispute resolution process and on
7 the builder's written request, the builder shall be given
8 reasonable opportunity to inspect the home that is the subject of
9 the request or have the home inspected to determine the nature and
10 cause of the construction defect and the nature and extent of
11 repairs necessary to remedy the construction defect.

12 SECTION 1.13. Sections 428.004(b) and (d), Property Code,
13 are amended to read as follows:

14 (b) If the dispute involves a structural matter in the home,
15 the commission shall appoint an approved engineer to be the
16 third-party inspector. The third-party inspector shall inspect the
17 home not later than the 15th ~~[30th]~~ day after the date the request
18 is submitted and issue a recommendation not later than the 30th
19 ~~[60th]~~ day after the date the third-party inspector receives the
20 assignment from the commission~~[, unless additional time is~~
21 ~~requested by the third-party inspector or a party to the dispute.~~
22 ~~The commission shall adopt rules governing the extension of time~~
23 ~~under this subsection].~~

24 (d) Except as provided by this subsection, the third-party
25 inspector's recommendation may not include payment of any monetary
26 consideration. ~~[If the inspector finds for the party who submitted~~
27 ~~the request, the commission may order the other party to reimburse~~

~~all or part of the fees and inspection expenses paid by the requestor under Section 426.004.]~~

SECTION 1.14. Section 429.001(c), Property Code, is amended to read as follows:

(c) The panel shall:

(1) review the recommendation for compliance with this title as required by rules adopted by the commission;

(2) approve, reject, or modify the recommendation of the third-party inspector or remand the dispute for further action by the third-party inspector; and

(3) issue written findings of fact and a ruling on the appeal not later than the 15th ~~[30th]~~ day after the date the notice of appeal is filed with the commission.

SECTION 1.15. Section 430.001(b), Property Code, is amended to read as follows:

(b) The warranty periods shall be:

(1) two years ~~[one year]~~ for workmanship and materials;

(2) two years for plumbing, electrical, heating, and air-conditioning delivery systems; and

(3) 10 years for major structural components of the home.

SECTION 1.16. Chapter 430, Property Code, is amended by adding Section 430.0075 to read as follows:

Sec. 430.0075. FULL DISCLOSURE WITH INFORMED CONSENT. (a) Before a contract may be executed between a builder and seller and a buyer for construction of a new home and before money may be

1 exchanged between the parties to the contract, the builder and
2 seller must provide to the buyer a full disclosure and informed
3 consent document that meets the following requirements:

4 (1) the buyer must receive from the builder and seller
5 full disclosure of product installation, care and component
6 warranties, building standards, risks, and hazards of the
7 particular property and home to be purchased;

8 (2) the buyer must receive from the builder and seller
9 full disclosure in understandable terms of any mandatory
10 alternative dispute resolution provisions, including mandatory
11 binding arbitration, and the associated costs of the various
12 processes; and

13 (3) the buyer must consent in writing to accept the
14 terms of the builder's and seller's disclosures and provisions for
15 new home construction by signing and dating the consent document.

16 (b) The builder and seller shall fully disclose in writing:

17 (1) the products that are installed in the home;

18 (2) care and component warranties;

19 (3) building standards; and

20 (4) risks and hazards of the home.

21 SECTION 1.17. Section 430.008(a), Property Code, is amended
22 to read as follows:

23 (a) The commission may approve as a third-party warranty
24 company for the purposes of Section 430.009:

25 (1) ~~[an entity that has operated warranty programs in~~
26 ~~this state for at least five years,~~

27 ~~[-2-]~~ a company whose performance is insured by an

1 insurance company authorized to engage in the business of insurance
2 in this state; or

3 (2) ~~[(3)]~~ an insurance company that insures the
4 warranty obligations of a builder under the statutory warranty and
5 building and performance standards.

6 SECTION 1.18. Section 430.010, Property Code, is amended to
7 read as follows:

8 Sec. 430.010. MINIMUM STANDARDS FOR DETERMINATION OF
9 DEFECT. A third-party warranty company shall use defect inspection
10 procedures substantially similar to the procedures adopted by the
11 commission under this subtitle. A warranty company may adopt
12 warranty standards in addition to the standards adopted by the
13 commission. A third-party warranty company may not reduce the
14 limited statutory warranty and building and performance
15 standards~~[, except that a third-party warranty company shall not be~~
16 ~~required to provide a warranty of habitability]~~.

17 SECTION 1.19. Section 430.011(c), Property Code, is amended
18 to read as follows:

19 (c) Breach of a limited statutory warranty adopted by the
20 commission or breach of the statutory warranty of habitability is
21 ~~[shall not, by itself, constitute]~~ a violation of the Deceptive
22 Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17,
23 Business & Commerce Code).

24 SECTION 1.20. Sections 416.011(c), 426.004, 426.007,
25 426.008(b), 428.004(e), and 430.009(e), Property Code, are
26 repealed.

27 SECTION 1.21. (a) On the effective date of this Act, the

terms of the three public members of the Texas Residential Construction Commission serving on that date expire.

(b) Not later than the 30th day after the effective date of this Act, the governor shall appoint three members to the Texas Residential Construction Commission to comply with Section 406.001(a), Property Code, as amended by this article, as follows:

(1) one member for a term expiring February 1, 2011;

(2) one member for a term expiring February 1, 2013;

and

(3) one member for a term expiring February 1, 2015.

SECTION 1.22. Not later than March 1, 2010, the Texas Residential Construction Commission shall adopt any rules necessary to implement the changes in law made by this article, including Section 416.011, Property Code.

ARTICLE 2. CHANGES TO RESIDENTIAL CONSTRUCTION LIABILITY CHAPTER

SECTION 2.01. Section 27.002(d), Property Code, is amended to read as follows:

(d) This chapter does not apply to an action to recover damages that arise from:

(1) a violation of Section 27.01, Business & Commerce Code; or

(2) ~~[a contractor's wrongful abandonment of an improvement project before completion, or~~

~~(3)]~~ a violation of Chapter 162.

SECTION 2.02. Sections 27.004(a), (b), (g), and (l), Property Code, are amended to read as follows:

(a) In a claim not subject to Subtitle D, Title 16, before

1 the 60th day preceding the date a claimant seeking from a contractor
 2 damages or other relief arising from a construction defect
 3 initiates an action, the claimant shall give written notice by
 4 certified mail, return receipt requested, to the contractor, at the
 5 contractor's last known address, specifying in reasonable detail
 6 the construction defects that are the subject of the complaint. ~~[On~~
 7 ~~the request of the contractor, the claimant shall provide to the~~
 8 ~~contractor any evidence that depicts the nature and cause of the~~
 9 ~~defect and the nature and extent of repairs necessary to remedy the~~
 10 ~~defect, including expert reports, photographs, and videotapes, if~~
 11 ~~that evidence would be discoverable under Rule 192, Texas Rules of~~
 12 ~~Civil Procedure.]~~ During the 20-day ~~[35-day]~~ period after the date
 13 the contractor receives the notice, ~~[and on the contractor's~~
 14 ~~written request,]~~ the contractor shall be given a reasonable
 15 opportunity to inspect and have inspected the property that is the
 16 subject of the complaint to determine the nature and cause of the
 17 defect and the nature and extent of repairs necessary to remedy the
 18 defect. The contractor may take reasonable steps to document the
 19 defect. In a claim subject to Subtitle D, Title 16, a contractor is
 20 entitled to make an offer of repair in accordance with Subsection
 21 (b). A claimant is not required to give written notice to a
 22 contractor under this subsection in a claim subject to Subtitle D,
 23 Title 16.

24 (b) Not later than the 15th day after the date of a final,
 25 unappealable determination of a dispute under Subtitle D, Title 16,
 26 if applicable, or not later than the 45th day after the date the
 27 contractor receives the notice under this section, if Subtitle D,

1 Title 16, does not apply, the contractor may make a written offer of
2 settlement to the claimant. The offer must be sent to the claimant
3 at the claimant's last known address or to the claimant's attorney
4 by certified mail, return receipt requested. The offer may include
5 either an agreement by the contractor to repair or to have repaired
6 by an independent contractor partially or totally at the
7 contractor's expense or at a reduced rate to the claimant any
8 construction defect described in the notice and shall describe in
9 reasonable detail the kind of repairs which will be made. The
10 repairs shall be made not later than the 20th ~~[45th]~~ day after the
11 date the contractor receives written notice of acceptance of the
12 settlement offer, unless completion is delayed by the claimant or
13 by other events beyond the control of the contractor. If a
14 contractor makes a written offer of settlement that the claimant
15 considers to be unreasonable:

16 (1) on or before the 25th day after the date the
17 claimant receives the offer, the claimant shall advise the
18 contractor in writing and in reasonable detail of the reasons why
19 the claimant considers the offer unreasonable; and

20 (2) not later than the 10th day after the date the
21 contractor receives notice under Subdivision (1), the contractor
22 may make a supplemental written offer of settlement to the claimant
23 by sending the offer to the claimant or the claimant's attorney.

24 (g) In ~~[Except as provided by Subsection (e), in]~~ an action
25 subject to this chapter the claimant may recover only the following
26 economic damages proximately caused by a construction defect:

27 (1) the reasonable cost of repairs necessary to cure

1 any construction defect;

2 (2) the reasonable and necessary cost for the
3 replacement or repair of any damaged goods in the residence;

4 (3) reasonable and necessary engineering and
5 consulting fees;

6 (4) the reasonable expenses of temporary housing
7 reasonably necessary during the repair period;

8 (5) the reduction in current market value, if any,
9 after the construction defect is repaired if the construction
10 defect is a structural failure; and

11 (6) reasonable and necessary attorney's fees.

12 (1) If Subtitle D, Title 16, applies to the claim and the
13 contractor's offer of repair is accepted by the claimant, the
14 contractor, on completion of the repairs and at the contractor's
15 expense, shall engage the third-party inspector who provided the
16 recommendation regarding the construction defect involved in the
17 claim to inspect the repairs and determine whether the residence,
18 as repaired, complies with the applicable limited statutory
19 warranty and building and performance standards adopted by the
20 commission. ~~[The contractor is entitled to a reasonable period not~~
21 ~~to exceed 15 days to address minor cosmetic items that are necessary~~
22 ~~to fully complete the repairs.]~~ The determination of the
23 third-party inspector of whether the repairs comply with the
24 applicable limited statutory warranty and building and performance
25 standards adopted by the commission establishes a rebuttable
26 presumption on that issue. A party seeking to dispute, vacate, or
27 overcome that presumption must establish by clear and convincing

evidence that the determination is inconsistent with the applicable limited statutory warranty and building and performance standards.

SECTION 2.03. Section 27.0042(c), Property Code, is amended to read as follows:

(c) If a contractor elects to purchase the residence under Subsection (a):

(1) the contractor shall pay the current market value ~~[original purchase price]~~ of the residence determined as if the residence did not have the construction defects, and closing costs incurred by the homeowner and the cost of transferring title to the contractor under the election;

(2) the homeowner may recover:

(A) reasonable and necessary attorney's and expert fees as identified in Section 27.004(g);

(B) reimbursement for permanent improvements the owner made to the residence after the date the owner purchased the residence from the builder; and

(C) reasonable costs to move from the residence; and

(3) conditioned on the payment of the purchase price, the homeowner shall tender a special warranty deed to the contractor, free of all liens and claims to liens as of the date the title is transferred to the contractor, and without damage caused by the homeowner.

SECTION 2.04. Sections 27.004(e) and (f), Property Code, are repealed.

SECTION 2.05. The changes in law made by this article apply

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1 only to a cause of action that accrues on or after the effective
2 date of this Act. A cause of action that accrues before the
3 effective date of this Act is governed by the law in effect
4 immediately before that date, and that law is continued in effect
5 for that purpose.

6 ARTICLE 3. EFFECTIVE DATE

7 SECTION 3.01. This Act takes effect September 1, 2009.